

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN THE MATTER OF:

Tracey Williams

Bankruptcy Case No. 08-81559

SS#: xxx-xx-0922

Mailing Address:

2116 Traceway South
Sanford, NC 27332

Debtor.

Tracey Williams

Plaintiff.

v.

AP No. 09-9029

**Washington Boulevard Motors, Inc., Alisina
Nezam, Nick Gable, and
Interstate Recovery Services**

Defendants.

**SECOND AMENDED COMPLAINT FOR SANCTIONS FOR CONTINUING,
WILFUL VIOLATIONS OF THE AUTOMATIC STAY**

NOW COMES the Plaintiff, Tracey Williams, through her attorney undersigned, and hereby amends her requests that the Court to grant a Judgment, pursuant to 11 U.S.C. § 362(h), Nick Gable, and Interstate Recovery Services for their continuing, willful violations of the automatic stay, violations of 11 U.S.C. § 1692, and N.C.G.S. § 75-50 *et seq.* The Plaintiff and the Defendants, Washington Boulevard Motors, Inc., and Alisina Nezam, have resolved all issues pending between them in an Order entered by the Court on February 26, 2010. In support of this Amended Complaint, the Plaintiff shows unto the Court the following:

1. The above-referenced debtor filed a Voluntary Petition under Chapter 13 of the United States Bankruptcy Code on October 17, 2008, and Richard M. Hutson is the duly appointed and acting Chapter 13 Trustee.
2. Pursuant to 15 U.S.C. § 1692a(3) and N.C.G.S. § 75-50 (1), Ms.

Williams is a “consumer” and Ms. Williams is a resident and citizen of North Carolina.

3. Citifinancial Auto and National Finance Company, Inc. were listed as the respective first and second lien holders on the 2002 Mercedes.
4. Citifinancial Auto filed a proof of claim with the Chapter 13 Trustee on October 24, 2008. The Certificate of Title was attached to secure their proof of claim. A copy of which is attached as Exhibit A, and is fully incorporated herein by reference.
5. On March 23, 2009, the Chapter 13 Trustee wrote Citifinancial regarding a returned payment the Trustee had received from Citifinancial and a statement that the account had been paid in full.
6. However, on or about June 9, 2009, a repossession agent came to the debtor’s house inquiring about the whereabouts of the 2002 Mercedes. The agent refused to give Ms. Williams any information on what creditor was trying to pick up her vehicle. Ms. Williams then informed the agent that she had filed bankruptcy and the car was under the Court’s protection.
7. On June 24, 2009, the repossession agent, who identified himself as “Detective Evans”, went to Ms. Williams place of employment. Since the parking is in a fenced in area, Detective Evans proceeded to tell Ms. Williams co-workers the reason he was there was to repossess her vehicle and gave them a phone number to have Ms. Williams call him.
8. Upon information and belief, “Detective Evans” was an agent of Alisina Nezam, a.k.a. “Ali”, and Washington Boulevard Motors, Inc.
9. Following the settlement with Washington Boulevard Motors, Inc. and Alisina Nezam, such parties identified “Detective Evans” as Nick Gable of Interstate Recovery Services.
10. Upon information and belief, Nick Gable is not a law enforcement officer.
11. Upon information and belief, Interstate Recovery Services is a corporation with its principal place of business being 7711 Poplar Hill Lane, Clinton MD 20735.
12. Pursuant to 15 U.S.C. § 1692a(6) and N.C.G.S. § 75-50(3), both

Nick Gable and Interstate Recovery Services are “debt collectors.”

13. That Ms. Williams reasonably understood the identification by Nick Gable and Interstate Recovery Services, acting under the alias “Detective Evans”, to be a representation that he was vouched for, bonded by, or affiliated with the United States, any state government or local government in violation of 15 U.S.C. § 1692e(1) and N.C.G.S. § 75-54(4).
14. That Ms. Williams reasonably understood the contact and threatened actions by Nick Gable and Interstate Recovery Services, acting under the alias “Detective Evans”, to be a representation her failure to surrender the vehicle would result in arrest or imprisonment in violation of 15 U.S.C. § 1692e(4) and N.C.G.S. § 75-54(4).
15. That Ms. Williams reasonably understood the contact and threatened actions by Nick Gable and Interstate Recovery Services, acting under the alias “Detective Evans”, to be a representation her failure to surrender the vehicle would result in the unlawful seizure of her vehicle in violation of 15 U.S.C. § 1692e(4) and N.C.G.S. § 75-54.
16. That Ms. Williams reasonably understood the contact and threatened actions by Nick Gable and Interstate Recovery Services, acting under the alias “Detective Evans”, to be a representation her failure to surrender the vehicle was a threat to take actions that could not legally be taken in violation of 15 U.S.C. § 1692e(5) and N.C.G.S. § 75-54.
17. That the communications between Nick Gable and Interstate Recovery Services and Ms. Williams’ co-workers where without Ms. Williams prior consent in violation of 15 U.S.C. § 1692c and N.C.G.S. § 75-52(4).
18. The debtor immediately called her attorney’s. On June 24, 2009, Wheatley Exum, with the Law Offices of John Orcutt, called “Detective Evans” at the number provided by the client and informed him that Ms. Williams was in an active Chapter 13 bankruptcy. His reply was, “We were not listed.” Ms. Exum stated that Citifinancial was listed and was told by Nick Gable and Interstate Recovery Services, still acting under the alias “Detective Evans”, that he was working for Washington Boulevard Motors, Inc.
19. Nick Gable and Interstate Recovery Services, still acting under the alias “Detective Evans”, called Ms. Exum at Law Offices of John Orcutt with a phone number to reach Washington Boulevard Motors,

Inc. since at the time of their conversation, he only had a fax number with him.

20. On June 24 2009, Wheatley Exum, gave verbal notice to "Ali" at Washington Boulevard Motors, Inc., which we believe to be Alisina Nezam, president of the corporation.
21. That on or about July 8, 2009, Washington Boulevard Motors, Inc., Gregory Harris, the registered agent for Washington Boulevard Motors, Inc., and Alisina Nezam all accepted service of the original Complaint filed in this case.
22. That on or about July 8, 2009, "Detective Evans" accepted service of the original Complaint filed in this case.
23. That on July 10, 2009, Alisina Nezam attempted to contact Nick Gable and Interstate Recovery Services to stop the repossession, leaving a message for Nick Gable to that effect.
24. That on July 21, 2009, counsel for the Plaintiff spoke with Gregory Harris, registered agent and counsel for Washington Boulevard Motors, Inc., and informed Mr. Harris that the Plaintiff was concerned that the Defendants were still waiting outside her housing complex and watching for an opportunity to repossess her car. Mr. Harris expressed doubt that such was actually occurring, but nonetheless indicated that he would direct Defendants to stay away from the Plaintiff and her vehicle.
25. That on or about July 21, 2009, Nick Gable and Interstate Recovery Service illegally repossessed the vehicle.
26. That on or about July 22, 2009, the Plaintiff filed a police report with the Durham Police, who, upon investigation, determined that the vehicle was in the possession of Nick Gable and Interstate Recovery Service, who refused to reveal its location or return the vehicle.
27. That, Upon information and belief, Nick Gable and Interstate Recovery Service refused to return the vehicle until Washington Boulevard Motors, Inc. paid for their services in the amount of \$3,000.00.
28. Nick Gable and Interstate Recovery continued collection efforts are in obvious, wilful violation of the automatic stay of 11 U.S.C. §362 (a), and as a consequence, the debtors are entitled to recover damages (actual and punitive), including costs and attorney's fees,

pursuant to 11 U.S.C. §362(k)(1).

29. That all contacts by Nick Gable and Interstate Recovery Services, acting under the alias “Detective Evans”, were willful and malicious violations of 11 U.S.C. § 362.
30. That as a result of these actions Ms. Williams has suffered actual damages, including, without limitation, physical and emotion distress, loss of the use of her vehicle, damage to the vehicle, loss of time from work, and attorneys’ fees and costs.

WHEREFORE, the Debtor respectfully prays the Court to enter an Order as follows:

1. Imposing an appropriate sanction against Nick Gable, personally, and Interstate Recovery Service in accordance with 11 U.S.C. §362(k)(1), 15 U.S.C. § 1692k(1), and that such damages be trebled pursuant to N.C.G.S. § 75-1.1.
2. Finding that Nick Gable, personally, and Interstate Recovery Service violated 15 U.S.C. § 1692e(1) and N.C.G.S. § 75-54(4) and award statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(1).
3. Finding that Nick Gable, personally, and Interstate Recovery Service violated 15 U.S.C. § 1692e(4) and N.C.G.S. § 75-54(4) and award statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(1).
4. Finding that Nick Gable, personally, and Interstate Recovery Service violated 15 U.S.C. § 1692e(4) and N.C.G.S. § 75-54 and award statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(1).
5. Finding that Nick Gable, personally, and Interstate Recovery Service violated 15 U.S.C. § 1692e(5) and N.C.G.S. § 75-54 and award statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(1).
6. Finding that Nick Gable, personally, and Interstate Recovery Service violated 15 U.S.C. § 1692c and N.C.G.S. § 75-52(4) and award statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(1).
7. Finding that Nick Gable, personally, and Interstate Recovery Service violated 15 U.S.C. § 1692e(4) and N.C.G.S. § 75-54 and award statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(1).
8. Finding that Nick Gable, personally, and Interstate Recovery Service violated 15 U.S.C. § 1692e(5) and N.C.G.S. § 75-54 and award

statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(1).

9. Finding that all such violations were willful and malicious.
10. Awarding Ms. Williams punitive damages for such violations.
11. Refer this matter to the United States Attorney and the North Carolina State Bureau of Investigations for investigation of whether Nick Gable committed any criminal acts by impersonating a law enforcement officer.
12. Directing that Nick Gable, personally, and Interstate Recovery Service pay the undersigned's reasonable attorney's fee for the drafting and prosecution of this matter, and for the reimbursement of undersigned's costs.
13. For such other and further relief as this Court deems just and proper.

Date March 24, 2010

Orcutt, Bledsoe and Boltz by

s/Edward Boltz

Edward Boltz

Attorney at Law

North Carolina State Bar No.: 23003

6616-203 Six Forks Road

Raleigh, NC 27615

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Defendants.

AFFIDAVIT OF SERVICE

I, Kimberly W. Gilbert, of Orcutt, Bledsoe and Boltz, do hereby certify that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age; and that on this day, I served copies of the foregoing **SUMMONS AND SECOND AMENDED COMPLAINT FOR SANCTIONS FOR CONTINUING, WILFUL VIOLATIONS OF THE AUTOMATIC STAY**, by automatic electronic noticing, upon the following parties:

Richard M. Hutson
Chapter 13 Trustee

and by regular, U.S. mail, first-class postage pre-paid, upon the following parties (including addresses):

Nick Gable
7711 Poplar Hill Lane
Clinton MD 20735

Interstate Recovery Service
Attn: Managing Agent
7711 Poplar Hill Lane
Clinton

Tracey Williams
2116 Traceway South
Sanford, NC 27332

Michael West
Bankruptcy Administrator
P.O. Box 1828
Greensboro, NC 27402

and by U.S. certified mail, return receipt requested, post-pre-paid, upon the following parties

Nick Gable
7711 Poplar Hill Lane
Clinton MD 20735

Interstate Recovery Service
Attn: Managing Agent
7711 Poplar Hill Lane
Clinton MD 20735

It is under penalty of perjury that I certify the foregoing to be true and correct.

Date: _____

s/ Kimberly W. Gilbert
Kimberly W. Gilbert